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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 06, 2021

SEAN F. MCAVOY, CLERK

CARRIE W.,

No. 1:20-CV-03067-JTR

Plaintiff,

v.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

Defendant.

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 16, 17. Attorney D. James Tree represents Carrie W. (Plaintiff); Special Assistant United States Attorney Katherine Watson represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

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ORDER GRANTING DEFENDANT'S MOTION . . . - 1

JURISDICTION

2 Plaintiff filed an application for Disability Insurance Benefits on July 26,
3 2011, alleging disability since September 9, 2010, due to depression, bursitis,
4 restless leg syndrome, bladder problems, and kidney problems. Tr. 62. The
5 application was denied initially and upon reconsideration. Tr. 87-89, 93-97.
6 Administrative Law Judge (ALJ) M.J. Adams held a hearing on November 6,
7 2013, Tr. 35-60, and issued an unfavorable decision on January 21, 2014, Tr. 19-
8 28. Plaintiff requested review from the Appeals Council and on June 2, 2015 the
9 Appeals Council denied the request for review. Tr. 1-5. Plaintiff filed a civil action
10 in this court and on June 13, 2016, the Court granted the parties' stipulated motion
11 to remand for further proceedings. Tr. 673-74.

12 A remand hearing was held before ALJ Adams on October 4, 2017. Tr. 627-
13 42. At that hearing, Plaintiff requested a closed period of disability, ending August
14 2, 2014. Tr. 631-32. Judge Adams issued a second unfavorable decision on May
15 11, 2018. Tr. 600-18. Plaintiff filed a second action in this court. Tr. 1957. On
16 March 11, 2019, Senior U.S. District Judge Lonnie Suko issued an order
17 remanding the claim for further proceedings. Tr. 1965-79.

18 A third hearing was held on December 31, 2019 before ALJ Virginia
19 Robinson. Tr. 1893-1923. On January 29, 2020, Judge Robinson issued an
20 unfavorable decision. Tr. 1867-82. Plaintiff did not file written exceptions with the
21 Appeals Council and the Appeals Council did not review the decision; the ALJ's
22 January 2020 decision therefore became the final decision of the Commissioner.
23 Tr. 1865. That decision is appealable to the district court pursuant to 42 U.S.C. §
24 405(g). Plaintiff filed this action for judicial review on May 14, 2020. ECF No. 1.

STATEMENT OF FACTS

26 Plaintiff was born in 1967 and was 43 years old as of her alleged onset date.
27 Tr. 1873. She has a GED and her work history has been primarily in casinos. Tr.
28 43, 630. She had a traumatic childhood and a long history of substance abuse. Tr.

1 569. She stopped working in 2010 due to her inability to handle the stress of
 2 working at the casino any longer. Tr. 45, 589, 635. In 2014 she completed trauma
 3 therapy and felt her mental health had improved to the point of being able to work
 4 again. Tr. 636, 1040-41.

5 **STANDARD OF REVIEW**

6 The ALJ is responsible for determining credibility, resolving conflicts in
 7 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
 8 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
 9 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
 10 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
 11 only if it is not supported by substantial evidence or if it is based on legal error.
 12 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
 13 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
 14 1098. Put another way, substantial evidence is such relevant evidence as a
 15 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
 16 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one
 17 rational interpretation, the Court may not substitute its judgment for that of the
 18 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,
 19 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the
 20 administrative findings, or if conflicting evidence supports a finding of either
 21 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*
 22 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision
 23 supported by substantial evidence will be set aside if the proper legal standards
 24 were not applied in weighing the evidence and making the decision. *Brawner v.*
 25 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

26 **SEQUENTIAL EVALUATION PROCESS**

27 The Commissioner has established a five-step sequential evaluation process
 28 for determining whether a person is disabled. 20 C.F.R. § 404.1520(a); *Bowen v.*

1 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant has
 2 the burden of establishing a *prima facie* case of entitlement to disability benefits.
 3 *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that
 4 a physical or mental impairment prevents the claimant from engaging in past
 5 relevant work. 20 C.F.R. § 404.1520(a)(4). If a claimant cannot perform past
 6 relevant work, the ALJ proceeds to step five, and the burden shifts to the
 7 Commissioner to show (1) the claimant can make an adjustment to other work; and
 8 (2) the claimant can perform specific jobs that exist in the national economy.
 9 *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193-94 (9th Cir. 2004). If
 10 a claimant cannot make an adjustment to other work in the national economy, the
 11 claimant will be found disabled. 20 C.F.R. § 404.1520(a)(4)(v).

12 **ADMINISTRATIVE FINDINGS**

13 On January 29, 2020, the ALJ issued a decision finding Plaintiff was not
 14 disabled as defined in the Social Security Act.

15 At step one, the ALJ found Plaintiff did not engage in substantial gainful
 16 activity during the requested closed period of disability between September 9,
 17 2010 and August 2, 2014. Tr. 1870.

18 At step two, the ALJ determined Plaintiff had the following severe
 19 impairments: spinal impairment, fibromyalgia, hypertension, thyroid disorder,
 20 obesity, affective disorder, and anxiety disorder (including PTSD). *Id.*

21 At step three, the ALJ found Plaintiff did not have an impairment or
 22 combination of impairments that met or medically equaled the severity of one of
 23 the listed impairments. Tr. 1871-72.

24 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found
 25 she could perform work at the light exertional level, except:

26 She could not climb ladders, ropes, or scaffoldings. She could
 27 frequently stoop, kneel, crouch, crawl, and climb ramps and stairs.
 28 She could frequently reach and handle. She needed to avoid

1 concentrated exposure to hazards and extreme cold. She could
 2 perform simple routine tasks, in a routine work environment. She
 3 could have superficial interaction with coworkers, with no jobs
 4 requiring teamwork, supervising other employees, or extensive
 problem solving. She could have occasional superficial interaction
 with the public.

5 Tr. 1873.

6 At step four, the ALJ found Plaintiff was unable to perform her past relevant
 7 work as a gambling dealer or dealing manager. Tr. 1880.

8 At step five, the ALJ determined that, based on the testimony of the
 9 vocational expert, and considering Plaintiff's age, education, work experience, and
 10 RFC, there were jobs that existed in significant numbers in the national economy
 11 that Plaintiff was capable of performing, including the jobs of housekeeping
 12 cleaner, production assembler, and inspector/hand packager. Tr. 1880-81.

13 The ALJ thus concluded Plaintiff was not under a disability within the
 14 meaning of the Social Security Act at any time during the requested closed period.
 15 Tr. 1881-82.

16 ISSUES

17 The question presented is whether substantial evidence supports the ALJ's
 18 decision denying benefits and, if so, whether that decision is based on proper legal
 19 standards.

20 Plaintiff contends the ALJ erred by (1) improperly rejecting medical opinion
 21 evidence; and (2) improperly discounting Plaintiff's subjective complaints.

22 DISCUSSION

23 1. Plaintiff's symptom statements

24 Plaintiff alleges the ALJ erred in rejecting her symptom testimony without
 25 providing adequate reasons. ECF No. 16 at 16-21.

26 It is the province of the ALJ to make determinations regarding a claimant's
 27 subjective statements. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

1 However, the ALJ's findings must be supported by specific cogent reasons.
2 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative
3 evidence of malingering, the ALJ's reasons for rejecting a claimant's testimony
4 must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281
5 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General
6 findings are insufficient: rather the ALJ must identify what testimony is not
7 credible and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d
8 at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

9 The ALJ found Plaintiff's medically determinable impairments could
10 reasonably be expected to cause some of the alleged symptoms; however, she
11 found Plaintiff's statements concerning the intensity, persistence and limiting
12 effects of her symptoms to not be entirely consistent with the medical evidence and
13 other evidence in the record. Tr. 1874. The ALJ found Plaintiff's allegations were
14 undermined by her ability to work with her impairments without any apparent
15 substantial worsening during the requested closed period, her improvement with
16 treatment, her largely unremarkable mental and physical exams, and her activities.
17 Tr. 1874-76.

18 Plaintiff argues the record does not support the ALJ's conclusions, as there
19 is evidence of Plaintiff's ongoing struggles with her mental health and physical
20 problems, with objective signs of both. She further argues the activities identified
21 by the ALJ are not inconsistent with disability. ECF No. 16 at 16-21. Defendant
22 argues the ALJ reasonably interpreted the record and that Plaintiff's competing
23 interpretation of the evidence does not show error. ECF No. 17 at 2-11.

24 The Court finds the ALJ did not err. An ALJ may rely on evidence that the
25 claimant's condition "ha[s] remained constant for a number of years" and "ha[s]
26 not prevented [the claimant] from working over that time." *Gregory v. Bowen*, 844
27 F.2d 664, 666-67 (9th Cir. 1988). The record indicates Plaintiff had experienced
28 pain and mental health symptoms for years prior to stopping work in 2010 and the

1 ALJ found the record did not establish any significant worsening of Plaintiff's
2 impairments compared to when she was working. Tr. 1874-75. This interpretation
3 is reasonable and supported by the ALJ's further discussion of the relatively
4 benign findings on exams. Although it cannot serve as the sole ground for rejecting
5 a claimant's symptom statements, objective medical evidence is a "relevant factor
6 in determining the severity of the claimant's pain and its disabling effects."
7 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The ALJ reasonably
8 pointed to the largely normal mental status exams and the lack of significant
9 findings on physical exams throughout the record in finding Plaintiff's allegations
10 to be unsupported. Tr. 1874-76. An ALJ may also consider the course and
11 effectiveness of treatment, including improvement with medication. Social
12 Security Ruling 16-3p. Finally, while the activities the ALJ identified do not
13 necessarily indicate an ability to engage in full-time competitive work, the ALJ
14 reasonably found that the activities undermine Plaintiff's allegations of being very
15 secluded and incapable of doing almost anything. Tr. 1876.

16 While Plaintiff offers an alternative interpretation of the evidence, the ALJ's
17 interpretation is rational. "When the evidence is susceptible to more than one
18 rational interpretation, we must uphold the ALJ's findings if they are supported by
19 inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104,
20 1111 (9th Cir. 2012).

21 **2. Medical opinion evidence**

22 Plaintiff alleges the ALJ improperly rejected opinions from multiple doctors
23 and other treating providers. ECF No. 16 at 2-16.

24 When a treating physician's opinion is contradicted by another physician,
25 the ALJ may reject the treating physician's opinion for "specific and legitimate
26 reasons" based on substantial evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1041
27 (9th Cir. 1995). The specific and legitimate standard can be met by the ALJ setting
28 out a detailed and thorough summary of the facts and conflicting clinical evidence,

1 stating their interpretation thereof, and making findings. *Magallanes v. Bowen*, 881
 2 F.2d 747, 751 (9th Cir. 1989). The ALJ is required to do more than offer their
 3 conclusions, they “must set forth [their] interpretations and explain why they,
 4 rather than the doctors’, are correct.” *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th
 5 Cir. 1988).

6 An ALJ may discount the opinion of an “other source,” such as a nurse
 7 practitioner, if they provide “reasons germane to each witness for doing so.”
 8 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

9 **a. Dr. Quaempts**

10 Plaintiff’s treating doctor, Rex Quaempts, completed a letter for vocational
 11 rehabilitation in 2011 and a medical source statements for Plaintiff’s disability
 12 claim in 2013. Tr. 241, 563-64. In 2011, he commented that Plaintiff had multiple
 13 medical issues that resulted in her needing to seek other employment, noting her
 14 hypertension was exacerbated by stress, recent carpal tunnel surgery made her a
 15 poor candidate for repetitive use of her hands, and her disrupted sleep meant she
 16 should not be on her feet for extended periods of time. Tr. 241. In 2013, Dr.
 17 Quaempts opined Plaintiff needed to lie down during the day and would miss four
 18 or more days of work per month from a full-time job. Tr. 563-64.

19 The ALJ gave these opinions minimal weight, noting Plaintiff’s
 20 hypertension and carpal tunnel syndrome had not caused significant limitations and
 21 her other impairments were adequately controlled and showed no significant
 22 worsening since Plaintiff was last employed. Tr. 1877. The ALJ further reasoned
 23 that Dr. Quaempts did not refer to any objective evidence to support his opinions
 24 and exams during the relevant period were unremarkable other than Plaintiff’s own
 25 subjective reports. Tr. 1877-78.

26 Plaintiff argues the record contradicts the ALJ’s conclusions, in that Dr.
 27 Quaempts did refer to multiple medical records as the basis of his opinions, the
 28 record reflects regular signs and symptoms of Plaintiff’s fibromyalgia and side

1 effects of medications in support of the limits, and that there is evidence of her
2 conditions worsening over the relevant period. ECF No. 16 at 7-9. She further
3 asserts Dr. Quaempts was the only doctor to assess the effects of fibromyalgia,
4 rendering his opinion uncontradicted. *Id.* at 5-7. Defendant argues the ALJ
5 reasonably found the opinion to be inconsistent with the overall record, including
6 the doctor's own treatment notes showing benign findings and adequate control of
7 conditions with treatment. ECF No. 17 at 11-12. Defendant further asserts the
8 evidence identified by Plaintiff does not compel a finding contrary to the ALJ's,
9 and notes the medical expert at the hearing testified there were no supportive exam
10 findings to support Dr. Quaempts' opinion. *Id.* at 13-15.

11 The Court finds the ALJ did not err. An ALJ may reasonably consider an
12 opinion's consistency with the record as a whole and support from the objective
13 medical signs and findings, along with the amount of explanation provided by the
14 source. 20 C.F.R. § 404.1527(c)(3)-(4). Dr. Quaempts did not refer to any
15 objective evidence to support his opinions and his treatment notes contain largely
16 normal exam findings other than some tenderness. Tr. 333-34, 344, 352, 451, 1274,
17 1305-07. The ALJ's interpretation is supported by substantial evidence.

18 Plaintiff further argues the ALJ erred with respect to her discussion of Dr.
19 Quaempts and the medical expert at the hearing, Dr. Goldstein. At the third hearing
20 in 2019, Dr. Steven Goldstein testified as a medical expert. Tr. 1906-11. He
21 testified Plaintiff's diagnoses included fibromyalgia, degenerative disc disease of
22 the lumbar spine, and morbid obesity, and no listings were met or equaled. Tr.
23 1907. He testified that these conditions would have limited her abilities, but did not
24 see enough in the physical exams during the relevant period to be able to assess the
25 degree of limitation. Tr. 1907. When asked about Dr. Quaempts' opinion regarding
26 the need to lie down during the day and missing work, Dr. Goldstein testified that
27 he could not tell from the record whether the opinion was true or not. Tr. 1910. The
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1 ALJ summarized this testimony and gave Dr. Goldstein significant weight, but
 2 gave greater weight to the more detailed state agency opinions. Tr. 1878.

3 Plaintiff argues the ALJ erred in her summary of Dr. Goldstein's testimony
 4 when she stated, "he did not see sufficient evidence to support Dr. Quaempts'
 5 opinion of absences or a need to lie down." Plaintiff asserts the medical expert did
 6 not state there was insufficient support for Dr. Quaempts' opinion, just that he did
 7 not see a linked exam or evidence about medication side effects supportive of the
 8 need to recline. ECF No. 16 at 12. Plaintiff further asserts the record does contain
 9 such evidence and that Dr. Quaempts' opinion should have been credited because
 10 Dr. Goldstein's testimony did not contradict it. *Id.* at 13. Defendant argues the fact
 11 that the medical expert testified the limits *could* be true did not undermine his
 12 express testimony that there were no supportive exams and he could not tell from
 13 the record whether the limits were true or not. ECF No. 17 at 13.

14 The Court finds the ALJ's summary of Dr. Goldstein's testimony was
 15 reasonable, and the ALJ did not err in giving more weight to Dr. Goldstein than
 16 Dr. Quaempts. While Plaintiff offers an alternative interpretation of the record, "if
 17 the evidence can reasonably support either affirming or reversing a decision, we
 18 may not substitute our judgment for that of the Commissioner." *Lingenfelter v.*
 19 *Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). The ALJ identified substantial
 20 evidence in support of her conclusions.

21 ***b. Dr. Moran***

22 In July 2011, Dr. John Moran completed a physical evaluation form for
 23 DSHS. Tr. 1316-19. He opined Plaintiff's primary impairments were chronic
 24 spinal pain and pyelonephritis (kidney infection), and that she had severe
 25 limitations due to lumbar disc disease and marked limits from chronic depression.
 26 Tr. 1318. He stated she was overall severely limited and unable to perform even
 27 sedentary work. *Id.*

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1 The ALJ gave this opinion minimal weight, noting the only abnormal
 2 finding on Dr. Moran's exam was tenderness in the lumbar spine, with no evidence
 3 of any psychological exam. Tr. 1878. The ALJ further noted that Dr. Moran had
 4 released Plaintiff to light activity following her hospitalization for her kidney
 5 infection and had noted a normal exam of her back. *Id.* Finally, the ALJ referred to
 6 her other rationale throughout the decision regarding Plaintiff's subjective reports,
 7 including the treatment records, exam findings, and activities. *Id.*

8 Plaintiff argues the record supports Dr. Moran's opinion, as he was her
 9 attending physician when she was hospitalized in June and July 2011 with various
 10 complaints. ECF No. 16 at 10. Plaintiff further argues that there is no inconsistency
 11 with her being released to undefined "light activity" following her hospitalization,
 12 and reasserts her arguments regarding the ALJ's assessment of her subjective
 13 reports. *Id.* at 11. Defendant argues the ALJ appropriately interpreted the record,
 14 which shows largely normal findings at contemporary exams, and that the opinion
 15 stating she was not capable of lifting even two pounds was inconsistent with her
 16 demonstrated activities. ECF No. 17 at 15-17.

17 The Court finds the ALJ did not err. Consistency with the record and support
 18 from the objective evidence are legitimate factors for the ALJ to consider in
 19 weighing an opinion. 20 C.F.R. § 404.1527(c)(3). Dr. Moran's opinion noted only
 20 tenderness to palpation in the lumbar spine, while all other exam findings were
 21 normal. Tr. 1317. The hospital records from his treatment of Plaintiff focus on her
 22 kidney infection and a single episode of chest discomfort with exercise. Tr. 263,
 23 286. Neither hospital stay documents any abnormal exams of her spine or mental
 24 status.¹ Tr. 264, 269, 297-301, 310-11. The June visit does not note back pain or
 25

26 ¹ Records from the July hospital stay noted Plaintiff's reports of back
 27 problems, but include no documentation of exams or treatment for the issue. Tr.
 28 286. Plaintiff was also noted to be anxious and crying on admission, but this was

1 chronic pain as issues that were addressed. Tr. 265. Therefore, the ALJ's
 2 assessment that Dr. Moran's opinion appears to be without objective basis is
 3 supported by substantial evidence.

4 ***c. MSW Sandra Macias and LMHC Doyle Hardy***

5 Plaintiff's treating counselor, Sandra Macias, completed multiple letters and
 6 medical source statements regarding Plaintiff's conditions.² Tr. 565-58, 591, 595-
 7 96. In 2011 she drafted a letter to the Washington State Division of Vocational
 8 Rehabilitation, noting Plaintiff was forced to quit her job at the casino because of
 9 excessive anxiety about the confrontational aspects of her job and anxiety and
 10 depression caused her to miss days of work. Tr. 591. In June 2013 Ms. Macias
 11 completed a letter and medical source statement for Plaintiff's disability claim,
 12 noting marked impairment in a number of areas, including handling very short
 13 simple instructions, maintaining attention and concentration for extended periods,
 14 performing within a schedule and maintaining regular attendance and punctuality,
 15 accepting instructions and responding appropriately to supervisors, and getting
 16 along with coworkers or peers. Tr. 565-66. She included a letter noting Plaintiff's
 17 anxiety and depression were exacerbated when situations overwhelmed her
 18 unstable emotional well-being. Tr. 568. In November 2013 Ms. Macias completed
 19 a third letter, noting Plaintiff's diagnoses, history of abuse, and substance use, and
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21
 22 attributed to pain, and the records noted Plaintiff calmed down with fluids and pain
 23 medication. Tr. 310. On discharge she was noted to have had a worsening of her
 24 depression while in the hospital due to a lapse in her mental health medications,
 25 but the record does not contain documentation of any mental status exams. Tr. 286-
 26 87.

27 ² Due to a technology issue, the records of Ms. Macias's treatment were not
 28 available. Tr. 595.

1 noting her increased anxiety when involved in stressful situations at work. Tr.
2 595-96.

3 Plaintiff's other counselor, Doyle Hardy, also completed a medical source
4 statement assessing marked and severe limitations in similar categories to Ms.
5 Macias's June 2013 opinion. Tr. 592-94. He additionally commented that
6 Plaintiff's PTSD symptoms had worsened and that she reported extreme anxiety
7 and panic when triggered, which "would prohibit her ability to manage a regular
8 work day or work week." Tr. 594.

9 The ALJ addressed Ms. Macias's two letters from 2013 and gave them
10 minimal weight other than to agree that Plaintiff was unable to perform her past
11 work at the casino. Tr. 1878-79. The ALJ found the remainder of the letters were
12 without objective support, as the treatment record reflected overall stability in
13 Plaintiff's psychological state, along with activities that contradicted Ms. Macias's
14 opinions, including travel, caretaking, household chores, and social activities. Tr.
15 1879. The ALJ also gave minimal weight to Mr. Hardy's opinion, finding it
16 without objective support and contradicted by his minimal degree of treatment
17 records and the record as a whole. *Id.*

18 Plaintiff argues the ALJ erred in failing to mention Ms. Macias's 2011 letter,
19 and improperly rejected her other letters without offering specific explanations for
20 how the record or Plaintiff's activities contradicted the opinions. ECF No. 16 at 13-
21 15. She further asserts the ALJ erred in rejecting Mr. Hardy's opinion as it was not
22 inconsistent with his own records, which showed ongoing difficulties. *Id.* at 15-16.
23 She also asserts any notations of Plaintiff doing well or being in better spirits must
24 be read in context with her ongoing issues. *Id.* Defendant argues the ALJ did not
25 err, as the discussion throughout the decision shows overall stability in Plaintiff's
26 mental state and largely normal mental status exams, and that her activities show a
27 greater level of functioning, all of which are supportive of the ALJ's conclusion
28 that the opinions were without objective support. ECF No. 17 at 19-20. Defendant

1 further asserts that Ms. Macias's 2011 letter indicated only that Plaintiff was
2 unable to perform her past work at the casino, a fact that the ALJ concurred with.
3 *Id.* at 18.

4 The Court finds the ALJ did not err. As noted above, the ALJ discussed the
5 largely normal mental status exam findings throughout her decision. Tr. 1874-75.
6 Other than when Plaintiff was actively engaging in trauma therapy, at which point
7 she showed some depressed or anxious mood and affect (Tr. 1054-66), mental
8 status exams were largely unremarkable. Tr. 350, 352, 451, 461, 469, 572, 585,
9 963, 1043, 1063-64. Consistency with the record and support from objective
10 findings is a germane factor for an ALJ to consider in assessing the persuasiveness
11 of an "other" source. 20 C.F.R. §§ 404.1527(c)(2)(4), 404.1527(f). While Plaintiff
12 offers an alternative interpretation of the record, the ALJ's discussion and
13 interpretation is reasonable. The Court further agrees with Defendant's discussion
14 of the 2011 letter, in that it did not offer any limitations or opinions that were
15 rejected by the ALJ. Therefore, any error in not discussing the letter was harmless
16 at most. *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (an error is
17 harmless when "it is clear from the record that the . . . error was inconsequential to
18 the ultimate nondisability determination").

19 CONCLUSION

20 Having reviewed the record and the ALJ's findings, the Court finds the
21 ALJ's decision is supported by substantial evidence and free of legal error and is
22 affirmed. Therefore, **IT IS HEREBY ORDERED:**

23 1. Defendant's Motion for Summary Judgment, **ECF No. 17**, is
24 **GRANTED.**

25 2. Plaintiff's Motion for Summary Judgment, **ECF No. 16**, is **DENIED**.

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The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant and the file shall be **CLOSED**.

IT IS SO ORDERED.

DATED April 6, 2021.



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JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE